

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STATE FARM LLOYDS,	§	
as subrogee of Bobbie L. Barnett,	§	CIVIL ACTION NO:4:10-CV-2473
<i>Plaintiff</i>	§	
	§	
v.	§	
	§	
GIBRALTAR INDUSTRIES, INC.	§	
<i>Defendant</i>	§	

DEFENDANT GIBRALTAR INDUSTRIES, INC.'S NOTICE OF REMOVAL

Defendant Gibraltar Industries, Inc. ("Gibraltar") files its Notice of Removal of Cause No. 10-DCV-178850; *State Farm Lloyds, as subrogee of Bobbie L. Barnett v. Gibraltar Industries, Inc.*, from the 400th Judicial District Court of Fort Bend County, Texas. In support of its Notice of Removal, Gibraltar states as follows:

1. On February 24, 2010, State Farm Lloyds, as subrogee of Bobbie L. Barnett ("State Farm"), filed the underlying lawsuit, Cause No. 10-DCV-178850; *State Farm Lloyds, as subrogee of Bobbie L. Barnett v. Gibraltar Industries, Inc.*, in the 400th Judicial District Court of Fort Bend County, Texas.

2. Citation and a copy of State Farm's Original Petition were served on Gibraltar through the Texas Secretary of State on May 19, 2010. State Farm's Petition was not removable on its face because it did not clearly identify facts that supported the conclusion that the amount in controversy in this case exceeded \$75,000.

3. On June 17, 2010, at the request of Gibraltar's counsel, State Farm filed its First Amended Petition. The First Amended Petition claims damages of at least \$188,137.16.

4. Removal to the United States District Court for the Southern District of Texas, Houston Division is proper because the 400th Judicial District Court of Fort Bend County is located within its boundaries.

5. Gibraltar files its Notice of Removal within thirty (30) days of the being served with pleadings justifying removal and within one (1) year after commencement of the action, as allowed by 28 U.S.C. § 1446(b).

6. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1332, 1441, and 1446.

7. A copy of all process, pleadings, and orders served upon Gibraltar is attached hereto as Exhibit "A."

I. Diversity of Citizenship Jurisdiction

8. This action is properly removed to this Court under 28 U.S.C. §§ 1332 and 1441. All properly joined and served parties are of diverse citizenship, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. State Farm is organized under the laws of the State of Texas and its principal place of business is in Dallas County, Texas. For purposes of diversity of citizenship State Farm should be considered a citizen of the State of Texas. Bobbie L. Barnett, State Farm's subrogor, is a resident of Fort Bend County, Texas.

10. Gibraltar is incorporated under the laws of the State of Delaware and its principal place of business is in Buffalo, New York. For the purposes of diversity of citizenship, Gibraltar should be considered a citizen of the State of New York or a citizen of the state of Delaware.

II. Amount in Controversy

11. State Farm has alleged damages to the property of its insured, Bobbie L. Barnett. See Exhibit “A” at para. 9.

12. In its First Amended Petition, State Farm alleged damages of at least \$188,137.16 as the result of a fire at Barnett’s home that it attributes to an attic fan manufactured by Gibraltar. Based on its own pleadings, State Farms claims that it is entitled to recover in excess of \$75,000 in this case. Gibraltar generally denies that assertion, but, for purposes of removal, it is clear by a preponderance of the evidence that the amount in controversy in this case satisfies the Court’s jurisdictional requirements.

13. Although Gibraltar denies that State Farm is entitled to recover any of the amounts claimed in its First Amended Petition, it is apparent from the facts set forth above that the amount in controversy exceeds the jurisdictional amount of \$75,000. *See Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1336 (5th Cir. 1995)(holding that, when a plaintiff does not allege a specific amount of damages, it is proper for the Court to consider summary-judgment-type evidence relevant to the amount in controversy as of the time of the removal).

14. Thus, this civil action is one in which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, in that it is a civil action between citizens of different

states, wherein the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest. Therefore, this action may be removed to this Court under 28 U.S.C. § 1441.

15. Under 28 U.S.C. § 1446(d), State Farm is being provided with a copy of this Notice of Removal, and a copy of this Notice of Removal is being filed with the Clerk of the 400th Judicial District Court of Fort Bend County, Texas.

16. In accordance with Rule 11 of the Federal Rules of Civil Procedure, undersigned counsel certify that they have read the foregoing Notice of Removal, that to the best of their knowledge, information, and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law, and that it is not interposed for any improper purpose.

17. By filing this Notice of Removal, Defendant does not waive and hereby reserves all defenses and objections to the Petition including, but not limited to, lack of personal jurisdiction, improper venue, and insufficiency of process.

Gibraltar Industries, Inc. requests that this Court assume full jurisdiction over the cause herein as provided by law. This Court has jurisdiction over the dispute because all properly joined parties are completely diverse and the jurisdictional amount has been met.

Respectfully submitted,

HENSLEE SCHWARTZ LLP

s/ Douglas M. Walla

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ATTORNEYS FOR DEFENDANT

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2010, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to counsel for all parties to this proceeding. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

David H. Fisk
Cozen O'Connor
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Dallas, TX 75201

s/ Douglas M. Walla
Douglas M. Walla